

REJECTION UNDER 35 U.S.C. § 102

The Examiner rejected claims 16-19, 21-23, 25-29, 35, and 37 under 35 U.S.C. §102(e) over Dupuis et al. (U.S. Patent No. 6,080,392). Applicant respectfully traverses the rejection.

The claimed invention is directed to a cosmetic composition comprising (A) at least one nonionic amphiphilic associative polyurethane corresponding to formula (I) and (B) at least one anionic polymer comprising at least one fatty-chain monomer unit. In formula (I), one of the radicals R_1 and R_2 is an alkyl group having 8 to 18 carbons and the other group is an alkyl group having 1 to 6 carbons.

Dupuis et al. teach a cosmetic composition comprising at least one associative polyurethane and at least one anionic polymer. See col. 1, lines 57-62. The associative polyurethane contains at least one hydrophilic sequence, at least one hydrophobic sequence, and at least one urethane group. See col. 2, lines 29-32. Particularly preferred polymers correspond to formula (IV) wherein "R and R', which may be identical or different, are C_8 - C_{18} hydrocarbon radicals" See col. 4, lines 56-67. Dupuis et al. does not teach a cosmetic composition comprising at least one nonionic amphiphilic associative polyurethane corresponding to a formula wherein the R and R' are different and defined such that one is an alkyl group having 8 to 18 carbons and the other group is an alkyl group having 1 to 6 carbons. Specifically, Dupuis et al. does not teach that one of the radicals R_1 and R_2 is an alkyl group having 8 to 18 carbons and the other group is an alkyl group having 1 to 6 carbons, as required by the claimed invention.

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Dupuis et al. does not teach all the elements of the claimed invention and thus, does not anticipate the claimed invention. Reconsideration and withdrawal of the rejection are respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

The Examiner rejected claims 20, 24, 30-34, and 36 under 35 U.S.C. §103(a) over Dupuis et al. in view of Cauwet et al. (U.S. Patent No. 5,478,562) and Prencipe et al. (U.S. Patent No. 5,385,729), in further view of Carey, Francis A., *Organic Chemistry*, McGraw-Hill, Inc., 1992, pp. 840-41 and 1222. Applicant respectfully traverses the rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim elements. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Finally, there must be a reasonable expectation of success. M.P.E.P. § 2143 (7th ed. 1998). Furthermore, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants' disclosure. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Additionally, the evidence of a teaching, suggestion, or motivation to combine must be "clear and particular." *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). As the Federal Circuit has stated, the Office must demonstrate a teaching or motivation to combine the prior art references to overcome the "powerful attraction of a hindsight-based obviousness analysis." *Id.*

Dupuis et al. teach polyurethanes corresponding to formula (I) in which X is a hydrophobic radical. See col. 3, lines 43-44. Specifically, Dupuis et al. teach preferred polymers corresponding to formula (IV) wherein "R and R', which may be identical or different, are C₈-C₁₈ hydrocarbon radicals." See col. 4, lines 56-67. Dupuis et al. does not teach or suggest a cosmetic composition comprising at least one nonionic amphiphilic associative polyurethane corresponding to a formula wherein the R and R' are different and defined such that one is an alkyl group having 8 to 18 carbons and the other group is an alkyl group having 1 to 6 carbons. Specifically, Dupuis et al. does not teach or suggest that the R and R' of the polyurethane should always be different from each other. More specifically, Dupuis et al. does not teach or suggest that one of the R and R' of the polyurethane be an alkyl group having 1 to 6 carbons.

Cauwet et al. does not overcome the deficiencies of Dupuis et al. In particular, Cauwet et al. teach a cosmetic composition comprising at least one nonionic surface-active agent of the alkyl polyglycoside and/or polyglycerolated type and at least one polyetherurethane. See col. 1, lines 63-67. However, Cauwet et al. does not teach or suggest a cosmetic composition comprising at least one nonionic amphiphilic associative polyurethane corresponding to a formula wherein the R and R' are different and defined such that one is an alkyl group having 8 to 18 carbons and the other group is an alkyl group having 1 to 6 carbons.

Prencipe et al. does not overcome the deficiencies of Dupuis et al. and Cauwet et al. The Examiner relies on Prencipe et al. for teaching a personal care composition containing a cross-linked polymer derived from a polymer containing repeating units in which one or more phosphonic acid groups are bonded to one or more carbon atoms in

the polymer chain. See Office Action, page 8, and Prencipe et al., col. 5, lines 65-68.

However, Prencipe et al. does not teach or suggest a cosmetic composition comprising at least one nonionic amphiphilic associative polyurethane corresponding to a formula wherein the R and R' are different and defined such that one is an alkyl group having 8 to 18 carbons and the other group is an alkyl group having 1 to 6 carbons.

Carey does not overcome the deficiencies of Dupuis et al, Cauwet et al., and Prencipe et al. The Examiner relies on Carey for the teaching that "condensation reactions are inherently known to give a product accompanied by the expulsion of a stable molecule when two molecules are combined." See Office Action, page 9, last sentence. However, Carey does not teach or suggest a cosmetic composition comprising at least one nonionic amphiphilic associative polyurethane corresponding to a formula wherein the R and R' are different and defined such that one is an alkyl group having 8 to 18 carbons and the other group is an alkyl group having 1 to 6 carbons.

The combination of references does not teach or suggest all of the claim elements, and thus the first criteria for a *prima facie* case of obviousness has not been met. Moreover, there is no "clear and particular" suggestion or motivation in the references to modify Dupuis et al. so that one of the C₈-C₁₈ hydrocarbon radicals is changed to a C₁-C₆ alkyl group. Absent Applicant's disclosure, there is no reasonable expectation of success that such a modification would result in a polyurethane that is compatible with (B) at least one anionic polymer comprising at least one fatty-chain monomer unit in a cosmetic composition. Reconsideration and withdrawal of the rejection are respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests the reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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